

SENATE BILL 2689
By Cohen

AN ACT to amend Tennessee Code Annotated, Title 9, Chapter 8,
relative to wrongful imprisonment.

WHEREAS, in May 1980, Clark McMillan ("McMillan") was convicted in the Shelby County Court of a rape and robbery of a sixteen-year-old girl that occurred on October 26, 1979 in Overton Park; and

WHEREAS, McMillan was sentenced to 119 years in prison; and

WHEREAS, the prosecution presented no physical evidence of McMillan's guilt at his trial; and

WHEREAS, the most significant evidence of McMillan's guilt was problematic identifications by the victim and her boyfriend as the perpetrator; and

WHEREAS, during the investigation of this crime, semen was recovered in the victim's rape kit and on her clothing; and

WHEREAS, forensic DNA testing did not exist at the time of the prosecution and conviction of McMillan; and

WHEREAS, at the time of his conviction, McMillan was twenty-two years old and physically disabled as the result of a spinal injury; and

WHEREAS, in August 2001, the State of Tennessee enacted a law allowing certain inmates access to postconviction DNA testing to support claims of factual innocence; and

WHEREAS, on April 18, 2002, the Tennessee Bureau of Investigation Memphis Crime Laboratory completed the relevant DNA testing, testing that irrefutably excluded McMillan as the source of the semen recovered from the victim; and

WHEREAS, on May 14, 2002, the prosecutor conceded McMillan's actual innocence and joined in his application to vacate the conviction and dismiss the indictment against him; and

WHEREAS, subsequent to McMillan's exoneration, the DNA profile of the semen recovered from the victim was matched to David Louis Boyd, a serial rapist who had been a suspect in other attacks in Overton Park and who is now serving a life prison sentence in Texas for a subsequent aggravated rape that occurred in 1983; and

WHEREAS, the Speaker of the Senate of the 102nd General Assembly of the State of Tennessee, in conjunction with Senator Roscoe Dixon, issued a proclamation recognizing Mr. McMillan for his determination, strength, and optimism; and

WHEREAS, McMillan's sister, father, and grandmother died while he was in prison, and his mother suffered several strokes and lost her home; and

WHEREAS, while incarcerated, McMillan received negligible medical treatment for the preexisting spinal injury and served his time in prison under extreme physical pain and discomfort as his condition deteriorated; and

WHEREAS, as a result of his wrongful conviction, McMillan sustained the following injuries: pain and suffering; severe mental anguish; emotional distress; loss of income; infliction of physical illness; inadequate medical care; humiliation, indignities, and embarrassment; degradation; injury to reputation; permanent loss of natural psychological development; and McMillan also endured restrictions on his liberty and all forms of personal freedom, such as diet, sleep, personal contact, educational opportunity, vocational opportunity, athletic opportunity, personal fulfillment, sexual activity, family relations, reading, television, movies, travel, enjoyment, and expression; and

WHEREAS, McMillan now resides in Memphis, Tennessee with his wife, Betty, who he met through prison ministries, and he plans to serve in a youth ministry, guiding and encouraging young people to make choices which will lead them to live productive lives; and

WHEREAS, McMillan's exoneration was the first under Tennessee's then-new postconviction DNA testing law; and

WHEREAS, McMillan served twenty-two and a half years for this crime that he did not commit, the second longest prison time served by any of the 140 postconviction DNA exonerations to date nationwide; and

WHEREAS, New York's compensation statute, NY Court of Claims Act § 8-D, has no award cap; and

WHEREAS, Alabama's compensation statute, Al. § 29-2-150-165, provides for compensation in the amount of a minimum of \$50,000 per year of wrongful imprisonment; and

WHEREAS, California's compensation statute, Cal. Penal Code § 4900-4906, provides for compensation in the amount of \$100 per day or \$36,500 per year of wrongful imprisonment; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 9, Chapter 8, Part 1, is amended by adding the following language as a new, appropriately designated section:

§ 9-8-113.

(a) Notwithstanding any provision of law to the contrary, if pursuant to a hearing conducted under § 9-8-108(a)(7), the board of claims determines by clear and convincing evidence that the claimant was convicted and imprisoned for commission of a felony against the state of Tennessee that either was not committed at all or was not committed by the claimant; and if the board further determines that the claimant did not, through any act or omission, intentionally or negligently contribute to such conviction or imprisonment; then the claimant shall be indemnified in an amount equal to one hundred dollars (\$100) for each day of incarceration served subsequent to the claimant's conviction. Notwithstanding any provision of title 29, chapter 20, or any other law to the contrary, the total amount of indemnification prescribed for such claimant, under this subsection, shall not be otherwise restricted or capped. For purposes of this subsection, the phrase "through any act or omission, intentionally or negligently contribute to such conviction or imprisonment" does not include selection or retention of incompetent or ineffective legal counsel.

(b) For purposes of this section, the claim must be filed with the board of claims on or before January 1, 2005; or, alternatively, the claim must be filed with

the board within six (6) months following the claimant's exoneration or unconditional pardon due to innocence.

(c) The office of the attorney general and reporter as well as the office of the district attorney general who participated in the conviction shall receive at least fifteen (15) days advance notice of the hearing and may present evidence and statements in opposition to the claim.

SECTION 2. In accordance with title 4, chapter 5, part 2, the board of claims is authorized to promulgate such rules as may be reasonably necessary to implement the provisions of this act in an efficient and effective manner.

SECTION 3. For purposes of rule promulgation, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2004, the public welfare requiring it, and shall apply only to claimants exonerated from guilt on or after January 1, 2000